



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

CHRISTOPHER JOSEPH FRANCIS,	§	
	§	
Petitioner,	§	
	§	
vs.	§	CIVIL ACTION NO. 4:05-2726-HFF-TER
	§	
HENRY MCMASTER, Attorney General	§	
of the State of South Carolina, and	§	
WARDEN OF EVANS CORRECTIONAL	§	
INSTITUTION	§	
	§	
Respondents.	§	

ORDER ADOPTING THE REPORT AND RECOMMENDATION OF THE
MAGISTRATE JUDGE, GRANTING RESPONDENTS'S MOTION FOR SUMMARY
JUDGMENT, AND DISMISSING THE PETITION *WITHOUT PREJUDICE*

This case was filed as a Section 2254 action. Petitioner is proceeding *pro se*. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that Respondents' motion for summary judgment be granted and Petitioner's petition be dismissed *without prejudice*. The Report is made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Matthews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made, and the Court may

accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on May 11, 2006. Petitioner subsequently filed a four-page objection memorandum that was received by the Clerk of Court on May 23, 2006. The Court has reviewed Petitioner's objections, but finds them to be without merit. Simply stated, and as observed by the Magistrate Judge, "[T]he Petition for Writ of Habeas Corpus must be dismissed because [P]etitioner still has available state court remedies which he has not exhausted." (Report 11 (citation omitted).) Consequently, for the reasons stated by the Magistrate Judge, the Court will dismiss this action *without prejudice*.

After a thorough review of the Report and the record in this case pursuant to the standards set forth above, the Court overrules Petitioner's objections, adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court that Respondents' motion for summary judgment be must be **GRANTED** and Petitioner's petition must be dismissed *without prejudice*. Any remaining motions are, thus, rendered moot.

IT IS SO ORDERED.

Signed this 13th day of June, 2006, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified of the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.